

1 **PARENT CHOICE IN EDUCATION ACT**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: J. Stuart Adams**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill creates a program to award scholarships to students to attend a private school.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ creates the Education Restricted Account;
- 13 ▶ specifies criteria for qualifying for a scholarship;
- 14 ▶ specifies criteria for private schools to enroll scholarship students;
- 15 ▶ specifies the amount, timing, and form of scholarship payments;
- 16 ▶ requires the State Board of Education to make rules;
- 17 ▶ gives the State Board of Education enforcement authority;
- 18 ▶ requires the Legislature to annually appropriate money from the General Fund for

19 scholarship payments; and

20 ▶ provides for monies to school districts to mitigate potential impacts due to
21 unplanned losses of revenue when a student transfers from a school district to a
22 private school.

23 **Monies Appropriated in this Bill:**

24 This bill appropriates:

25 ▶ as on ongoing appropriation subject to future budget constraints, \$100,000 from the
26 General Fund for fiscal year 2005-06 to the State Board of Education.

27 **Other Special Clauses:**



28 This bill coordinates with H.B. 294 by providing substantive changes.

29 **Utah Code Sections Affected:**

30 ENACTS:

31 **51-8-101**, Utah Code Annotated 1953

32 **53A-1a-801**, Utah Code Annotated 1953

33 **53A-1a-802**, Utah Code Annotated 1953

34 **53A-1a-803**, Utah Code Annotated 1953

35 **53A-1a-804**, Utah Code Annotated 1953

36 **53A-1a-805**, Utah Code Annotated 1953

37 **53A-1a-806**, Utah Code Annotated 1953

38 **53A-1a-807**, Utah Code Annotated 1953

39 **53A-1a-808**, Utah Code Annotated 1953

40 **53A-1a-809**, Utah Code Annotated 1953

41 **53A-1a-810**, Utah Code Annotated 1953

42 **53A-1a-811**, Utah Code Annotated 1953



44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **51-8-101** is enacted to read:

46 **51-8-101. Education Restricted Account created.**

47 (1) A restricted account is created within revenues collected by the state from taxes on
48 intangible property or income. The restricted account shall be known as the Education
49 Restricted Account.

50 (2) The contents of the Education Restricted Account shall consist of monies deposited
51 to the account pursuant to Section 53A-1a-807.

52 (3) The Legislature shall appropriate money from the Education Restricted Account for
53 the following purposes:

54 (a) to mitigate impacts due to a reduction in revenues resulting from the transfer of
55 scholarship students from a school district to a private school pursuant to Title 53A, Chapter
56 1a, Part 8, Parent Choice in Education Act;

57 (b) other public education purposes; or

58 (c) to fund the higher education system.

59 Section 2. Section **53A-1a-801** is enacted to read:

60 **Part 8. Parent Choice in Education Act**

61 **53A-1a-801. Title.**

62 This part is known as the "Parent Choice in Education Act."

63 Section 3. Section **53A-1a-802** is enacted to read:

64 **53A-1a-802. Findings and purpose.**

65 The Legislature finds that:

66 (1) parents are presumed best informed to make decisions for their children, including
67 the educational setting that will best serve their children's interests and educational needs;

68 (2) the establishment of this choice in education program is justified on the basis of
69 funding the educational needs of school-age children as determined by their parents;

70 (3) school-age children are the primary beneficiaries of the choice in education
71 program authorized in this part, and any benefit to private schools, whether sectarian or secular,
72 is indirect and incidental;

73 (4) the choice in education program authorized by this part is available to the parents of
74 school-age children, solely on the basis of income level for the year immediately preceding the
75 year for which a scholarship is sought, and not on the basis of sex, race, religion, national
76 origin, or any other criteria; and

77 (5) the choice in education program authorized in this part is:

78 (a) enacted for the valid secular purpose of tailoring a child's education to that child's
79 specific needs as determined by the parent;

80 (b) neutral with respect to religion; and

81 (c) limited in its assistance to a parent, who may choose to use the scholarship to offset
82 tuition or fees charged by a private school, either sectarian or secular, in which enrollment of
83 the parent's child is sought, solely as a result of the parent's genuine and independent private
84 choices.

85 Section 4. Section **53A-1a-803** is enacted to read:

86 **53A-1a-803. Definitions.**

87 As used in this part:

88 (1) "Average student cost" means Minimum School Program costs divided by total
89 student membership in public schools on October 1.

90 (2) "Board" means the State Board of Education.

91 (3) "Eligible private school" means a private school that meets the requirements of
92 Section 53A-1a-805.

93 (4) "Income eligibility guideline" means the maximum annual income allowed to
94 qualify for reduced price meals for the applicable household size as published by the U.S.
95 Department of Agriculture by notice in the Federal Register.

96 (5) "Minimum School Program costs" means the sum of the following costs:

97 (a) programs listed in Section 53A-17a-104 the costs of which are tied to the value of
98 the weighted pupil unit;

99 (b) the following programs listed in Section 53A-17a-104:

100 (i) Social Security and retirement;

101 (ii) Local Discretionary Block Grant Program;

102 (iii) Interventions for Student Success Block Grant Program;

103 (iv) Quality Teaching Block Grant Program;

104 (v) at-risk programs;

105 (vi) accelerated learning programs; and

106 (v) K-3 Reading Improvement Program; and

107 (c) the state contribution to the voted and board leeway programs established under
108 Sections 53A-17a-133 and 53A-17a-134.

109 (6) "Parent" includes a legal guardian.

110 (7) "Scholarship student" means a student who receives a scholarship under this part.

111 (8) "Tuition" means amounts charged for attending a private school, excluding fees for
112 extracurricular activities or transportation to the private school.

113 Section 5. Section **53A-1a-804** is enacted to read:

114 **53A-1a-804. Scholarship program created -- Qualifications -- Application.**

115 (1) The Parent Choice in Education Program is created to award scholarships to
116 students to attend a private school.

117 (2) To qualify for a scholarship under this part:

118 (a) the student's custodial parent or legal guardian shall reside within Utah;

119 (b) the student shall be at least five years of age before September 2 of the year in

120 which admission to a private school is sought and under 19 years of age on the last day of the

121 school year as determined by the private school, or, if the individual has not graduated from
122 high school, will be under 22 years of age on the last day of the school year as determined by
123 the private school;

124 (c) the student shall meet one or more of the following criteria:

125 (i) the student was born after September 1, 2000;

126 (ii) the student was enrolled as a full-time student in a Utah public school on January 1,
127 2006;

128 (iii) the individual was not a Utah resident on January 1, 2006; or

129 (iv) the student's parents had an annual income less than or equal to 100% of the
130 income eligibility guideline in the calendar year immediately preceding the school year for
131 which a scholarship is sought; and

132 (d) the student may not be a recipient of a scholarship awarded under Chapter 1a, Part
133 7, Carson Smith Scholarships for Students with Special Needs Act.

134 (3) (a) To receive a scholarship, the parent of a student shall submit an application for
135 the scholarship to the board by the July 15 preceding the school year for which a scholarship is
136 sought. Along with the application, the student's parent shall submit documentation verifying
137 income as required by board rule.

138 (b) The board may waive the July 15 application deadline.

139 (4) The board shall award scholarships by the August 15 preceding the school year for
140 which a scholarship is sought.

141 (5) (a) The scholarship application form shall contain the following statement:

142 "I acknowledge that:

143 (1) A private school may not provide the same level of services that are provided in a
144 public school.

145 (2) The private school in which I have chosen to enroll my child has disclosed to me
146 the teaching credentials of the school's teachers and the school's accreditation status.

147 (3) I will assume full financial responsibility for the education of my scholarship
148 student if I accept this scholarship.

149 (4) Acceptance of this scholarship has the same effect as a parental refusal to consent
150 to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
151 U.S.C. Sec. 1400 et seq."

152 (b) Upon acceptance of the scholarship, the parent assumes full financial responsibility
153 for the education of the scholarship student.

154 (c) Acceptance of a scholarship has the same effect as a parental refusal to consent to
155 services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
156 U.S.C. Sec. 1400 et seq.

157 (6) A student's parent, at any time, may remove the student from a private school and
158 place the student in another eligible private school and retain the scholarship.

159 Section 6. Section **53A-1a-805** is enacted to read:

160 **53A-1a-805. Eligible private schools.**

161 (1) To be eligible to enroll a scholarship student, a private school shall:

162 (a) have a physical location in Utah where the scholarship students attend classes and
163 have direct contact with the school's teachers;

164 (b) contract with an independent certified public accountant to perform the agreed upon
165 procedures specified in Subsection (2) and produce a report of the results which shall be
166 submitted to the board at the times specified in Subsection (2);

167 (c) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d;

168 (d) meet state and local health and safety laws and codes;

169 (e) disclose to the parent of each prospective student, before the student is enrolled, the
170 special education services that will be provided to the student, if any, including the cost of
171 those services;

172 (f) (i) annually assess the achievement of each student by administering:

173 (A) a norm-referenced test scored by an independent party that provides a comparison
174 of the student's performance to other students on a national basis; or

175 (B) an alternative assessment of the student's achievement, if the student:

176 (I) has a disability or limited English proficiency; and

177 (II) would be exempt from taking a nationally norm-referenced achievement test if
178 enrolled in a Utah public school;

179 (ii) report the test results to the student's parents; and

180 (iii) upon request, make test results available to other persons, in a manner that does
181 not reveal the identity of any student;

182 (g) employ or contract with teachers who:

- 183 (i) hold baccalaureate or higher degrees; or
184 (ii) have special skills, knowledge, or expertise that qualifies them to provide
185 instruction in the subjects taught;
186 (h) provide to parents the teaching credentials of the school's teachers; and
187 (i) provide, upon request to any person, a statement indicating which, if any,
188 organizations have accredited the private school.
- 189 (2) (a) The agreed upon procedures to be performed pursuant to Subsection (1)(b) are
190 as follows:
- 191 (i) Determine that working capital is at least 80% of average quarterly expenditures by
192 taking total expenditures for a year and dividing it by four and then dividing average quarterly
193 expenditures into working capital. For a school in the first year of operations use the estimated
194 budget to estimate average quarterly expenditures.
- 195 (ii) Determine that scholarship payments are accounted for separately and reconciled to
196 student records. For the first year of operations determine that procedures are in place for this
197 accounting.
- 198 (iii) Determine that expenditure of scholarship funds have been made for education
199 expenses and is consistent with other tuition expenditures. For the first year of operations
200 determine that procedures are in place for this accounting.
- 201 (b) (i) The independent certified public accountant's report on the agreed upon
202 procedures specified in Subsection (2)(a) shall be submitted to the board when the private
203 school applies to accept scholarship students and every four years thereafter, except as
204 provided in Subsection (2)(b)(ii).
- 205 (ii) The board may by rule delay the date when the independent certified public
206 accountant's report shall be submitted for private schools applying to accept scholarship
207 students in the 2006-07 school year.
- 208 (3) The following are not eligible to enroll scholarship students:
- 209 (a) a school with an enrollment of fewer than 25 students;
210 (b) a school that operates in a residence; or
211 (c) a residential treatment facility licensed by the state.
- 212 (4) (a) Except as provided in Subsection (4)(b), a private school intending to enroll
213 scholarship students shall submit an application to the board by May 1 of the school year

214 preceding the school year in which it intends to enroll scholarship students.

215 (b) A private school intending to enroll scholarship students in the 2006-07 school year
216 shall submit an application by June 15, 2006.

217 (5) The board shall:

218 (a) approve a private school's application to enroll scholarship students if the private
219 school meets the eligibility requirements of this section; and

220 (b) make available to the public a list of the eligible private schools:

221 (i) for the 2007-08 school year and each school year thereafter, by the May 30
222 preceding the school year; and

223 (ii) for the 2006-07 school year, by July 1, 2006.

224 Section 7. Section **53A-1a-806** is enacted to read:

225 **53A-1a-806. Scholarship payments.**

226 (1) (a) Scholarships shall be awarded by the board subject to the availability of money
227 appropriated by the Legislature for that purpose.

228 (b) The Legislature shall annually appropriate money to the board from the General
229 Fund to make scholarship payments.

230 (c) (i) If monies are not available to pay for all scholarships requested, the scholarships
231 shall be allocated on a random basis except that preference shall be given to students who
232 received scholarships in the previous year.

233 (ii) If monies are insufficient in a school year to pay for all the continuing scholarships,
234 new scholarships may not be awarded during that school year, and the monies available for
235 scholarships shall be prorated among the eligible students who received scholarships in the
236 previous year.

237 (2) (a) Scholarships shall be awarded based upon the income of a scholarship student's
238 parents in the calendar year immediately preceding the school year for which a scholarship is
239 sought.

240 (b) (i) The board shall make rules specifying how the income of a prospective
241 scholarship student's parents shall be determined.

242 (ii) The rules shall provide that the scholarship shall be based upon parental income as
243 follows:

244 (A) if the parents are married, the income of both parents;

- 245 (B) if a parent is widowed, the income of the widowed parent;
246 (C) if a parent is widowed and has remarried, the income of the parent and stepparent;
247 (D) if the parents are divorced, the income of the parent with whom the scholarship
248 student resided for the greatest amount of time during the past 12 months;
249 (E) if the parents are divorced and the scholarship student resided with each parent an
250 equal amount of time, the income of the parent who provided more financial support during the
251 past 12 months;
252 (F) if the divorced parent with whom the scholarship student resided for the greatest
253 amount of time or who provided the greatest financial support has remarried, the income of the
254 parent and stepparent; and
255 (G) if the scholarship student resides with a guardian, the income of the guardian,
256 unless the guardian's income is exempt by board rule.
257 (iii) The rules shall provide that:
258 (A) if a parent filed federal or state income tax forms, income shall be based upon
259 adjusted gross income as listed on the income tax forms;
260 (B) if a parent was exempt from filing federal and state income tax forms, income shall
261 be based on income earned from work; and
262 (C) a parent shall submit documentation verifying income.
263 (3) (a) The board shall compare the income of a scholarship student's parents to the
264 maximum annual incomes listed in the income eligibility guideline as defined in Section
265 53A-1a-803 to set the scholarship amount.
266 (b) In determining scholarship amounts, the board shall use:
267 (i) the income eligibility guideline in effect for the school year immediately preceding
268 the school year for which a scholarship is sought; and
269 (ii) the scholarship student's household size as the applicable household size for the
270 purpose of determining maximum annual income under the income eligibility guideline.
271 (4) Full-year scholarships shall be awarded in the amounts shown in the following
272 table, or for the amount of tuition for a full year, whichever is less.
273 If the annual income of a scholarship
274 student's parents is: The full-year scholarship amount is:
275 Less than or equal to 100% of the

276	<u>income eligibility guideline</u>	<u>\$3,500</u>
277	<u>Greater than 100% but less than or equal</u>	
278	<u>to 125% of the income eligibility guideline</u>	<u>\$3,250</u>
279	<u>Greater than 125% but less than or equal to</u>	
280	<u>150% of the income eligibility guideline</u>	<u>\$3,000</u>
281	<u>Greater than 150% but less than or equal to</u>	
282	<u>175% of the income eligibility guideline</u>	<u>\$2,750</u>
283	<u>Greater than 175% but less than or equal to</u>	
284	<u>200% of the income eligibility guideline</u>	<u>\$2,500</u>
285	<u>Greater than 200% but less than or equal to</u>	
286	<u>225% of the income eligibility guideline</u>	<u>\$2,250</u>
287	<u>Greater than 225% but less than or equal to</u>	
288	<u>250% of the income eligibility guideline</u>	<u>\$1,500</u>
289	<u>Greater than 250% but less than or equal to</u>	
290	<u>275% of the income eligibility guideline</u>	<u>\$750</u>
291	<u>Greater than 275% of the income eligibility guideline</u>	<u>\$500</u>

292 (5) The full-year scholarship amounts shown in the table in Subsection (4) apply to
293 scholarships for all grades except kindergarten. The full-year scholarship amount for
294 kindergarten shall be .55 times the amounts shown in the table in Subsection (4).

295 (6) Beginning July 1, 2007, the board shall annually increase the full-year scholarship
296 amounts shown in the table in Subsection (4) by the same percentage annual increase in the
297 value of the weighted pupil unit established in Section 53A-17a-103.

298 (7) (a) Except as provided in Subsection (7)(b), upon review and receipt of
299 documentation that verifies a student's admission to, or continuing enrollment and attendance
300 at, a private school, the board shall make scholarship payments in four equal amounts no later
301 than September 1, November 1, February 1, and April 15 of each school year in which a
302 scholarship is in force.

303 (b) In accordance with board rule, the board shall make a scholarship payment before
304 the first quarterly payment of the school year, if a private school requires partial payment of
305 tuition before the start of the school year to reserve space for a student admitted to the school.

306 (8) A parent of a scholarship student shall notify the board if the student does not have

307 continuing enrollment and attendance at an eligible private school.

308 (9) Before scholarship payments are made, the board shall cross-check enrollment lists
309 of scholarship students, school districts, and youth in custody to ensure that scholarship
310 payments are not erroneously made.

311 (10) (a) Scholarship payments shall be made by the board by individual warrant made
312 payable to the student's parent and mailed by the board to the private school. The parent shall
313 restrictively endorse the warrant to the private school for deposit into the account of the private
314 school.

315 (b) A person, on behalf of a private school, may not accept a power of attorney from a
316 parent to sign a warrant referred to in Subsection (10)(a), and a parent of a scholarship student
317 may not give a power of attorney designating a person, on behalf of a private school, as the
318 parent's attorney in fact.

319 Section 8. Section **53A-1a-807** is enacted to read:

320 **53A-1a-807. Mitigation Monies -- Deduction from a school district's minimum**
321 **school program allocation.**

322 (1) As provided in this section, a school district shall receive monies to mitigate
323 potential impacts due to the unplanned reduction in revenues resulting from the transfer of
324 scholarship students from the district to a private school.

325 (2) A school district shall retain in enrollment for purposes of receiving funds under
326 the minimum school program each scholarship student that:

327 (a) transfers from the school district to a private school; and

328 (b) resides within the boundaries of the school district.

329 (3) Each transferred scholarship student meeting the criteria of Subsection (2) shall be
330 retained in enrollment:

331 (a) for five years following the transfer; or

332 (b) until the student transfers back to the school district, if the student transfers back to
333 the school district within five years.

334 (4) For each year a school district retains in enrollment transferred scholarship students
335 as provided in this section, the board shall deduct from minimum school program funds
336 distributed to the school district an amount equal to the number of transferred scholarship
337 students retained in enrollment times the average scholarship amount for scholarship students

338 statewide.

339 (5) the monies deducted from a school district's minimum school program funds as
340 provided by Subsection (4) shall be deposited into the Education Restricted Account created in
341 Section 51-8-101.

342 Section 9. Section **53A-1a-808** is enacted to read:

343 **53A-1a-808. Board to make rules.**

344 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
345 board shall make rules consistent with this part:

346 (a) establishing the application process for the scholarship program;

347 (b) establishing how the income of a scholarship student's parents shall be determined;

348 and

349 (c) implementing Section 53A-1a-807.

350 (2) By May 15, 2006, the board shall adopt rules establishing:

351 (a) the application process for private schools and scholarship students; and

352 (b) how the income of a scholarship student's parents shall be determined.

353 Section 10. Section **53A-1a-809** is enacted to read:

354 **53A-1a-809. Enforcement and penalties.**

355 (1) (a) The board shall require private schools to submit signed affidavits assuring the
356 private school will comply with the requirements of this part.

357 (b) If a school fails to submit a signed affidavit after having an opportunity to provide
358 explanations and request delays, the board may:

359 (i) deny the private school permission to enroll scholarship students; and

360 (ii) interrupt disbursement of or withhold scholarship payments.

361 (2) The board may investigate complaints and convene administrative hearings for an
362 alleged violation of this part.

363 (3) Upon a finding that this part was violated, the board may:

364 (a) deny a private school permission to enroll scholarship students;

365 (b) interrupt disbursement of or withhold scholarship payments; or

366 (c) issue an order for repayment of scholarship payments fraudulently obtained.

367 Section 11. Section **53A-1a-810** is enacted to read:

368 **53A-1a-810. Limitation on regulation of private schools.**

369 Nothing in this part grants additional authority to any state agency or school district to
370 regulate private schools except as expressly set forth in this part.

371 Section 12. Section **53A-1a-811** is enacted to read:

372 **53A-1a-811. Review by legislative auditor general.**

373 The legislative auditor general shall conduct a review and issue a report on the Parent
374 Choice in Education Program after the conclusion of the 2012-13 school year.

375 Section 13. **Appropriation.**

376 As an ongoing appropriation subject to future budget constraints, \$100,000 is
377 appropriated from the General Fund for fiscal year 2005-06 to the State Board of Education for
378 the administration of the Parent Choice in Education Act created in Title 53A, Chapter 1a, Part
379 8.

380 Section 14. **Coordinating H.B. 184 with H.B. 294 -- Substantive changes.**

381 If this H.B. 184 and H.B. 294, Creation of Education Fund, both pass, it is the intent of
382 the Legislature that the Office of Legislative Research and General Counsel, in preparing the
383 Utah Code database for publication, shall do the following:

384 (1) repeal Section 51-8-101; and

385 (2) modify Subsection 53A-1a-807(5) to read as follows:

386 "(5) The monies deducted from a school district's minimum school program funds as
387 provided by Subsection (4) shall be deposited into the Education Fund created in Section
388 51-5-4."

Legislative Review Note
as of 2-9-06 3:13 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

This bill appropriates an on going \$100,000 from the General Fund to the State Board of Education for FY 2006 for the administration of the Parent Choice in Education Act.

The bill also provides for the Legislature to appropriate funding for scholarship grants. It is estimated that passage of this bill could require appropriations up to \$13,185,000 from the General Fund to provide scholarship grants to qualifying students in FY 2007. For students leaving the public schools it is estimated that up to \$8,576,000 could be deposited into the Education Restricted Account created by the bill which would be available for appropriation by the Legislature in the following year. Second year costs are estimated to be \$14,123,800 from the General Fund for scholarship grants and an estimated amount of \$9,170,700 going to the Education Restricted Account.

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
	<u>Approp.</u>	<u>Approp.</u>	<u>Approp.</u>	<u>Revenue</u>	<u>Revenue</u>	<u>Revenue</u>
General Fund	\$100,000	\$13,285,000	\$14,223,800	\$0	\$0	\$0
Restricted Funds	\$0	\$0	\$0	\$0	\$8,576,000	\$9,170,700
TOTAL	\$100,000	\$13,285,000	\$14,223,800	\$0	\$8,576,000	\$9,170,700

Individual and Business Impact

Private schools and students attending private schools may benefit.